

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Brett James Catoe, #296942,	)	
	)	C/A No. 9:12-164-MBS
Petitioner,	)	
	)	
vs.	)	
	)	<b>ORDER</b>
Warden of Ridgeland Correctional	)	
Institution,	)	
	)	
Respondent.	)	
_____	)	

Petitioner Brett James Catoe is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at Allendale Correctional Institution in Fairfax, South Carolina. On January 18, 2012, Petitioner, proceeding pro se, filed a petition for writ of certiorari pursuant to 28 U.S.C. § 2254, as amended on February 10, 2012. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling.

Respondent filed a motion for summary judgment on April 12, 2012. Respondent contends, among other things, that the § 2254 petition should be dismissed as untimely under 28 U.S.C. § 2244(d). By order filed April 13, 2013, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), Petitioner was advised of the summary judgment procedures and the possible consequences if he failed to respond adequately. Petitioner filed a response in opposition to Respondent's motion on June 7, 2012.

On September 27, 2012, the Magistrate Judge issued a Report and Recommendation in which he determined that the within § 2254 petition was untimely filed, and that Petitioner is not entitled to equitable tolling. Accordingly, the Magistrate Judge recommended that Respondent's motion for

summary judgment be granted. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. Respondent’s motion for summary judgment (ECF No. 20) is **granted**. Petitioner’s § 2254 petition is dismissed, with prejudice.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour

Chief United States District Judge

Columbia, South Carolina

October 30, 2012

**NOTICE OF RIGHT TO APPEAL**

**Petitioner is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**